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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

EDDIE MITCHELL,

Defendant and Appellant.

B204009

(Los Angeles County
Super. Ct. No. BA308727)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Anne H. Egerton, Judge. Affirmed.

Alex Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle and Douglas L. Wilson, Deputy Attorneys General, for Plaintiff and Respondent.

SUMMARY

Eddie Mitchell was convicted of one count of second degree robbery, with gang and firearm allegations found true. He was sentenced to a term of 13 years in state prison. He appeals, claiming the true finding on the gang allegation was not supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL SYNOPSIS

On August 26, 2006, at about 10:30 a.m., Cedric Jones opened his clothing store on Vermont Avenue, between 76th and 77th Streets in Los Angeles. After setting up some displays outside, he washed his hands in the restroom inside. Then, as he turned around, he saw a gun in his face. A male voice told him to turn around and get down on the floor. Afraid, Jones complied. He felt a knee in his back and the gun at the back of his head. “Don’t let me see your eyes or I’m going to kill you.” Jones’s arms and legs were tied up, and he was blindfolded.

Jones’s money and wallet were taken from his pocket, his diamond earrings were removed from his ears and his belt was taken. He heard a lot of things being “moved and pushed and ripped down.” When the men could not get the cash register open, a man lifted Jones up and walked him to the register to open it. He was returned to the ground with shirts piled on his head. The store became quiet, but Jones remained on the floor, uncertain whether the robbers remained. Someone saw Jones and screamed, asking if he was alright.

Los Angeles Police Officers Michael Pace and Eric Crawson responded to Jones’s store. Jones had installed a digital video security camera system so the officers reviewed the surveillance footage. The recording was very clear and provided multiple camera angles of the events Jones’s recounted. The robbers had stolen about \$2,500 to \$3,000 cash and \$7,000 in merchandise. Jones never saw who robbed him. He recognized a couple of faces in the video recording but did not know the men’s names.

Because the crime had occurred in the “heart” of the territory claimed by the 74 Hoover criminal street gang and given the “likelihood” the crime had been committed by area gang members, Officer Pace asked Officer Robert Quiroz, an expert on this gang, to view still photographs taken from the surveillance footage. Quiroz “immediately” identified Mitchell, David Macon and Kendrick McGee among the six male Blacks involved in the robbery.¹

Mitchell was charged with one count of second degree robbery. (Pen. Code, § 211 [all further statutory references are to the Penal Code].) It was further alleged his crime was committed for the benefit of, at the direction of or in association with a criminal street gang (§ 186.22, subd. (b)(1)(A)) and a principal had been armed with a firearm (§ 12022, subd. (a)(1)).

At trial, the People presented evidence of the facts summarized above. The jury viewed the surveillance footage of the robbery. In addition, Officer Quiroz testified as a gang expert.² He said he had been with the Los Angeles Police Department for over nine and a half years.³ After working patrol where he had daily contact with gang members, he had been assigned to the 77th Division Gang Enforcement Detail for four and a half years. The area he worked most was bordered by Manchester Boulevard, Vermont Avenue, Florence Avenue and the 110 Freeway.

At the police academy, Officer Quiroz received formal training regarding gang culture both inside and outside the prison system and street gangs and had attended

¹ He was unable to identify the other three.

² Officer Mario Cardona, another member of the gang enforcement detail for four years, provided testimony similar to Officer Quiroz’s. Officer Cardona also recognized the three 74 Hoover gang members (Mitchell, Macon and McGee) and opined the robbery was committed in association with and for the benefit of the gang. He added that a portion of robbery proceeds was typically used for the annual July 4 party hosted by the 74 Hoovers.

³ Officer Quiroz worked at the California Youth Authority before that.

various training classes thereafter. He had been involved in hundreds of criminal gang investigations and executions of search warrants. He had testified as a gang expert at least 30 times, primarily regarding the 74 Hoover and Eight Trey Hoover gangs, and taught classes about gangs for other police officers. As part of the gang enforcement detail, he was assigned to monitor the 74 and Eight Trey Hoovers. He routinely spoke with gang members—during arrests, investigations and socially in order to build rapport.

The 74 Hoovers identified with the color orange and sometimes wore orange Houston Astro attire. They also wore orange San Francisco Giants baseball caps because the gang equated the “S.F.” embroidery with the number “Seventy Four.” They did not always wear orange though. “[T]hey call themselves pretty much anybody’s killer,” so they feel they can wear any color, including red or blue to disrespect other gangs, “because they are Hoover Criminal.” He described the Hoover graffiti that could be seen throughout the area.

Officer Quiroz testified the Hoovers is a “big, big gang,” with different subsets, including 74 Hoovers and Eight Trey Hoovers. Vermont Avenue is a “loose border,” as the 74 Hoovers and Eight Trey Hoovers both “claim” the area, but “get along” and “share” the area. The “Eight Treys” and “Seven Fours” are “part of the same gang overall.” “Eight Trey and Seven Four, they tend to go by Trey Four Love, which just shows their allegiance to both. Like [Kendrick] McGee, he has ‘Three Four’ tattooed on his . . . arm showing the allegiance.” “[R]egardless of the clique,” they are “all Hoovers.”⁴

The primary activities of the 74 Hoovers are street robberies, bank robberies, narcotic sales, weapons violations, walkup shootings, drive-bys, assaults with deadly weapons and murders. Officer Quiroz investigated an assault with a firearm on

⁴ Officer Cardona testified the store where the robbery occurred was on the loose border between Seven Four Hoovers and Eight Trey Hoovers, where 74 Hoovers “primarily take advantage of citizens, commit their crimes, sell their drugs in that area, that they would enforce as their area.” Seven Four Hoovers never had any problems with Eight Trey Gangsters for as long as Officer Cardona could remember.

November 11, 2005, in 74 Hoover territory, for which 74 Hoover Todd Gillium was convicted. He was also familiar with and had testified as an expert in a December 2004 murder case in which Travis George, an Eight Trey Hoover, was convicted. “A lot of the main focus for the 74 Hoovers is street robberies.” A lot of the young guys do the street robberies, he said; most of the older, more experienced guys do the “bigger licks” (robberies), such as the takeover robbery of Jones’s store.

According to Officer Quiroz, many gang members never leave the gang. They may move on and have families, but still come around on their “Hood Day,” which is their anniversary (July 4 because they are 74 Hoovers). Officer Quiroz knew Mitchell (and Macon) “quite well.” He had known them for “a long time” and had many contacts with them between 2000 and 2006, including well over 40 contacts with Mitchell. He first met Mitchell, known in the gang as “Baby Scooby,” when he was spray painting graffiti. He had admitted being a member of the 74 Hoovers and had gang tattoos, and Officer Quiroz saw him several times with other 74 Hoovers in the area. Almost every time Quiroz ran into Mitchell, he was wearing his “74 hat”—a San Francisco Giants baseball cap.

Officer Quiroz knew Mitchell had become a carpenter and had been a member of the union for years. Mitchell was proud to have gotten a good job supporting his family and showed Officer Quiroz his check stubs at one point. Mitchell’s mother and grandmother lived in the area where the robbery occurred and cared for his children while he worked. Although Officer Quiroz was unaware Mitchell had had a gang tattoo on his neck surgically removed, he noted Mitchell “still hangs out with the guys,” and “still wear[s] his S.F. hat when he’s in the area. Every time after work, he would show up.”

Officer Quiroz testified this robbery was not a crime of opportunity. He was “very familiar” with the location, including the store itself, as it is within the area he patrolled every day. He opined the robbery was committed for the benefit of the 74 Hoover gang. Three of the robbers were documented members of this gang. The robbery occurred within this gang’s territory. The robbers wore no masks, with knowledge they could be

recognized. Such brazenness benefitted the gang by creating an atmosphere of intimidation in the community. Typically, in robberies of this sort, Quiroz said, the money and clothing are divided among gang members. The clothing would be sold for money; the money would be used to buy drugs and guns.

Mitchell presented no evidence in his defense.⁵ He conceded his presence in the surveillance footage but challenged the gang allegation.⁶

The jury convicted Mitchell of second degree robbery and found true the gang and firearm allegations.

The trial court sentenced Mitchell to a term of 13 years in state prison, calculated as follows: the low term of 2 years for the robbery conviction, plus 10 years for the gang enhancement and 1 year for the firearm allegation.⁷

Mitchell appeals.

DISCUSSION

According to Mitchell, the gang enhancement is not supported by substantial evidence for two reasons. First, he argues, there was insufficient evidence the 74 Hoovers engaged in a “pattern of criminal activity” as one of the predicate crimes was committed by an individual (Travis George, an Eight Trey Hoover) who was neither a 74 Hoover nor shown to share any organizational tie with the 74 Hoovers. We disagree.

Subdivision (f) of section 186.22 defines a “criminal street gang” as “any organization, association or group of three or more” that has “as one of its primary

⁵ Mitchell’s motion to dismiss the gang allegation pursuant to section 1118.1 was denied.

⁶ He also argued he was guilty of a lesser included theft offense rather than robbery, but does not raise this argument on appeal.

⁷ Mitchell admitted a prior strike (another robbery, § 211), but the trial court struck this conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

activities the commission of one or more of the criminal acts” enumerated in the gang enhancement statute. Subdivision (e) defines a “pattern of criminal gang activity” as “the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the [enumerated] offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons.”

Officer Quiroz testified as a gang expert, explaining that the 74 Hoovers and Eight Trey Hoovers were subsets of the much larger Hoover gang—subsets who “g[o]t along” and “share[d]” the area. “[T]hey tend to go by Trey Four Love, which just shows their allegiance to both.” As an example, he noted Kendrick McGee’s “Three Four” tattoo. “[R]egardless of the clique, he said, they are “all Hoovers” and “part of the same gang overall.” Not only did he list multiple enumerated offenses as primary activities of the 74 Hoovers (see *People v. Vy* (2004) 122 Cal.App.4th 1209, 1222-1223 [sufficient proof of the gang’s primary activities might consist of evidence that the group’s members consistently and repeatedly have committed criminal activity listed in the gang statute or expert testimony of the type found in *People v. Gardeley* (1996) 14 Cal.4th 605, where a police gang expert testified that the defendant’s gang “was primarily engaged in the sale of narcotics and witness intimidation, both statutorily enumerated felonies”]), Officer Quiroz specifically testified regarding 74 Hoover Todd Gillium’s conviction for a November 2005, assault with a firearm, as well as Eight Trey Hoover Travis George’s December 2004 murder conviction. This was sufficient.⁸ (See *People v. Ortega* (2006) 145 Cal.App.4th 1344, 1357; *In re Jose P.* (2003) 106 Cal.App.4th 458, 467-468 [evidence of gang activity satisfying section 186.22 need not be specific to a particular

⁸ Mitchell’s reliance on *People v. Williams* (2008) 167 Cal.App.4th 983, in which the court noted the distinctions between the gangs involved in that case and the type of street gang involved here, is misplaced.

subgroup of a criminal street gang; the requirement is satisfied by evidence of gang-related criminal activity by members of any of the affiliated subgroups].)

In any event, a “pattern of criminal gang activity” requires proof of “two or more predicate offenses.” (§ 186.22, subd. (e).) Mitchell does not challenge the sufficiency of Gillium’s conviction, and as the jury was instructed, the robbery in this case, committed by Mitchell along with two other documented 74 Hoover gang members, suffices as the second predicate offense. (*People v. Bragg* (2008) 161 Cal.App.4th 1385, 1401-1402 [“It is of no moment that the prosecutor did not choose to argue that the second predicate crime could be established by a conviction of the crimes alleged in this information. However the prosecutor chose to argue the matter, the jury knew that it could consider the current offenses as a predicate offense under the statute.”].) Accordingly, the evidence of primary activities was sufficient to support the gang enhancement.

In a supplemental brief, Mitchell argues there was insufficient evidence the robbery was committed for the benefit of the 74 Hoovers because, he says, the speculation of Officers Quiroz and Cardona was not grounded on reliable fact.⁹ Again, we disagree.

Rarely is there direct evidence of the defendant’s mental state; specific intent must often be inferred from circumstantial evidence. (*People v. Beeman* (1984) 35 Cal.3d 547, 558-559.) Thus, “[c]ommission of a crime in concert with known gang members is substantial evidence which supports the inference that the defendant acted with the specific intent to promote, further or assist gang members in the commission of the crime.” (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 322; see also *People v. Morales* (2003) 112 Cal.App.4th 1176, 1198-1199 [intent to commit robbery in association with other known gang members supported inference of intent to assist criminal conduct by fellow gang members].) In addition, a jury may rely on expert

⁹ He also argued the evidence establishing the primary activities of the 74 Hoovers was insufficient, but, in his reply brief, citing *People v. Martinez* (2008) 158 Cal.App.4th 1324, 1330, Mitchell concedes this argument.

testimony about gang culture and habits to reach a verdict on a gang-related offense or a finding on a gang allegation. (*People v. Ferraez* (2003) 112 Cal.App.4th 925, 930 [expert testimony drug offense was gang-related plus evidence defendant received permission from a gang to sell illegal drugs at a mall and admission of gang membership constituted sufficient circumstantial evidence defendant intended to benefit gang].) As established by the factual summary, substantial evidence supported the jury's true finding on the gang enhancement.¹⁰

DISPOSITION

The judgment is affirmed.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.

¹⁰ We note that our Supreme Court has granted review in a case from Division Six of this court to determine whether substantial evidence supports convictions under Penal Code section 186.22, subdivision (a) (active participation in criminal street gang), and true findings with respect to enhancements under Penal Code section 186.22, subdivision (b), based on a gang expert's testimony that three gang members who raped a young woman committed their crimes for the benefit of and in association with their gang. (*People v. Albillar*, review granted Aug. 13, 2008, S163905.) The Court's opinion may restrict the scope of permissible testimony from gang experts with respect to the required showing under Penal Code section 186.22 that a crime was committed for the benefit of, at the direction of, or in association with a criminal street gang and may also provide guidance as to the type and extent of evidence, in addition to an expert's testimony, necessary to establish a crime is sufficiently gang-related to support a criminal street gang enhancement. Nonetheless, until and unless the Supreme Court issues an opinion providing differently, we are constrained by *People v. Gardeley*, *supra*, 14 Cal.4th 605 and its progeny approving of the admissibility of such opinion testimony.